

REMARKS**Summary of the Office Action**

Claims 31-33, 35-40, 42-45, 47-49 and 51-54 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hashimoto, EP 938,091 (hereinafter “Hashimoto”).

Summary of the Response to the Office Action

Applicants have amended independent the claims as indicated above, and added new dependent claims 55-58, to differently describe embodiments of the invention and/or to improve the form of the claims. Accordingly, claims 31-33, 35-40, 42-45, 47-49 and 51-58 are currently pending for consideration.

The 35 U.S.C. § 102(b) Rejection

To the extent that this rejection might be deemed to apply to currently pending claims 31-33, 35-40, 42-45, 47-49, and 51-58, Applicants respectfully submit that the claims should be allowable for at least the following reasons.

The Examiner states on page 2 of the Office Action that Applicants’ argument is not persuasive because Hashimoto discloses that when the source is determined to be a “non-cognizant device” and the copy control information is one for permitting only one recording, recording is prohibited (See Figure 18, Non-cognizant device, input CCI = once, cognizant recording ccid/emid = proh). However, this prohibition of the recording is not performed if EMI (Encryption Mode Indicator) is illegally altered from “proh” to “once.” The EMI (Encryption

Mode Indicator) of Hashimoto can be easily altered, because the EMI is merely a kind of flag. For example, col. 8, line 54 through col. 9, line 1 of paragraph 0026 clearly describes that “[t]he EMI is disposed in the header of an isochronous packet, and indicates the encryption mode of a payload (data part) of the packet. More specifically, the EMI indicates mode A (proh) for copy prohibited data, mode B (once) for copy once data, or free for non-encrypted copy-free contents data (please see).”

To indicate the three states of the encryption mode, 2 bits of information is enough for the EMI. This kind of flag can be easily altered for one who intends to conduct an illegal copy.

On the contrary, the scramble system of the claimed embodiments of the present invention is not a flag and cannot be easily altered. This is because the scramble system is one for encrypting a digital signal, a plurality of scramble systems are used, algorithms of the plurality of scramble systems are different from one another, or a plurality of keys which are used for scramble as described, for example, in page 22, line 21 through page 23, line 10 of the specification. In the embodiments of the present invention, a copy protection is conducted by the combination of this kind scramble system and copy control information. Therefore, to alter the scramble system of the embodiments of the present invention illegally, one who intends to conduct an illegal copy has to prepare a plurality of scramble devices or keys in one illegal recording apparatus. However, it is difficult to obtain such a plurality of algorithms or keys for the scramble system. Therefore, a copy protection is infallibly executed in the embodiments of the present invention.

Consequently, Applicants submit that the cited reference fails to teach or disclose at least concept for using the combination of copy control information and that kind scramble system, which is not a flag. Hence, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, withdrawal of the rejections and allowance of all pending claims are earnestly solicited. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution. A favorable action is awaited.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

DRINKER, BIDDLE & REATH LLP

Date: January 30, 2009



Joseph J. Buczynski
Reg. No. 35,084

CUSTOMER NO. 55694
DRINKER, BIDDLE & REATH LLP
1500 K Street, N.W., Suite 1100
Washington, D.C. 20005-1209